

ESTTA Tracking number: **ESTTA668677**

Filing date: **04/24/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	PepsiCo, Inc.
Granted to Date of previous extension	04/29/2015
Address	700 Anderson Hill Road Purchase, NY 10577 UNITED STATES

Attorney information	Paul Lee PepsiCo, Inc. 700 Anderson Hill Road Purchase, NY 10577 UNITED STATES trademarks@pepsico.com, paul.lee@pepsico.com, donna.j.sanders@pepsico.com Phone:914-253-3443
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Applicant Information

Application No	86384378	Publication date	12/30/2014
Opposition Filing Date	04/24/2015	Opposition Period Ends	04/29/2015
Applicant	MVS International Inc. 2993 SW 141st Terrace Davie, FL 33330 UNITED STATES		

Goods/Services Affected by Opposition


Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of soft drinks; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Drinking water with vitamins; Energy drinks; Essences for use in making soft drinks; Non-alcoholic drinks, namely, energy shots; Non-alcoholic sparkling fruit juice beverages; Powders for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Sparkling water; Sports drinks, namely, energy drinks; Syrups for making fruit-flavored drinks; Syrups for making soft drinks

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1917411	Application Date	02/22/1994
Registration Date	09/05/1995	Foreign Priority Date	NONE
Word Mark	AQUAFINA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1994/07/00 First Use In Commerce: 1994/07/00 [soft drinks, aerated water, mineral water, soda water, carbonated water,] non-carbonated water, table water		


U.S. Registration No.	2509365	Application Date	07/27/2000
Registration Date	11/20/2001	Foreign Priority Date	NONE
Word Mark	AQUAFINA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 DRINKING WATER		


U.S. Registration No.	2509701	Application Date	11/14/2000
Registration Date	11/20/2001	Foreign Priority Date	NONE
Word Mark	AQUAFINA		


Design Mark	
Description of Mark	"The mark consists of the word "AQUAFINA" and a mountain design on a blue background.
Goods/Services	Class 032. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 Drinking water

U.S. Registration No.	2506697	Application Date	12/28/2000
Registration Date	11/13/2001	Foreign Priority Date	NONE
Word Mark	AQUAFINA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1994/07/00 First Use In Commerce: 1994/07/00 NON-CARBONATED WATER AND TABLE WATER		

U.S. Registration No.	3567613	Application Date	06/25/2008
Registration Date	01/27/2009	Foreign Priority Date	NONE
Word Mark	AQUAFINA		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1994/07/00 First Use In Commerce: 1994/07/00 Drinking water

U.S. Registration No.	3383131	Application Date	03/08/2006
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	AQUAFINA FLAVORSPLASH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2007/01/01 First Use In Commerce: 2007/01/01 Flavored waters		

U.S. Registration No.	4553279	Application Date	07/31/2013
Registration Date	06/17/2014	Foreign Priority Date	NONE
Word Mark	AQUAFINA FLAVORSPLASH		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 2013/10/00 First Use In Commerce: 2013/10/00 Flavorings for beverages

U.S. Registration No.	4638108	Application Date	07/31/2013
Registration Date	11/11/2014	Foreign Priority Date	NONE

Word Mark	AQUAFINA FLAVORSPLASH WORLD PEACH
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Design Mark	
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Description of Mark	The mark consists of the words "AQUAFINA FLAVORSPLASH" and "WORLD PEACH" in stylized orange letters. There is an arc design underneath "AQUAFINA". The entire mark resides on yellow background.
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Goods/Services	Class 030. First use: First Use: 2013/10/00 First Use In Commerce: 2013/10/00 Flavorings for beverages
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U.S. Registration No.	4633565	Application Date	07/31/2013
Registration Date	11/04/2014	Foreign Priority Date	NONE

Word Mark	AQUAFINA FLAVORSPLASH SO STRAW-BERRY
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Design Mark		
Description of Mark	The mark consists of the words "AQUAFINA FLAVORSPLASH" and "SO STRAWBERRY" in stylized green letters. There is an arc design underneath "AQUAFINA". The entire mark resides on red background.	
Goods/Services	Class 030. First use: First Use: 2013/10/00 First Use In Commerce: 2013/10/00 Flavorings for beverages	

U.S. Registration No.	4626218	Application Date	11/11/2013
Registration Date	10/21/2014	Foreign Priority Date	NONE
Word Mark	AQUAFINA FLAVORSPLASH GO GRAPE		
Design Mark			
Description of Mark	The mark consists of THE WORDS "AQUAFINA" IN STYLIZED GREEN LETTERS, "FLAVORSPLASH" IN STYLIZED WHITE LETTERS AND "GO GRAPE" IN STYLIZED GREEN LETTERS. THERE IS A GREEN ARC DESIGN UNDERNEATH "AQUAFINA", AND THE "GO GRAPE" PORTION HAS PURPLE STIPPLING IN THE LETTERING. THE ENTIRE MARK RESIDES ON A PURPLE		

	BACKGROUND.
Goods/Services	Class 032. First use: First Use: 2014/06/00 First Use In Commerce: 2014/06/00 Flavored waters

Attachments	76098357#TMSN.png(bytes) 76165891#TMSN.png(bytes) 76187810#TMSN.png(bytes) 77507319#TMSN.png(bytes) 78832409#TMSN.png(bytes) 86025159#TMSN.png(bytes) 86025173#TMSN.png(bytes) 86025165#TMSN.png(bytes) 86115091#TMSN.png(bytes) Notice of Opposition - AQUAFIX.pdf(303002 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Paul A. Lee/
Name	Paul Lee
Date	04/24/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF APPLICATION SERIAL NO. 86/384,378:

Mark : AQUAFIX
Applicant : MVS International Inc.
Filed : September 3, 2014
Published in
the Official Gazette : December 30, 2014

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PEPSICO, INC.,	:	
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Opposer,	:	Opposition No.
	:	
v.	:	
	:	
MVS INTERNATIONAL INC.,	:	
	:	
Applicant.	:	
	X	

NOTICE OF OPPOSITION

Opposer, PepsiCo, Inc. (“PepsiCo” or “Opposer”), a North Carolina corporation having a place of business at 700 Anderson Hill Road, Purchase, New York 10577 believes that it will be damaged by the registration of Application Serial No. 86/384,378, filed on September 3, 2014, in the name of MVS International Inc. (hereinafter “Applicant”) for the alleged mark AQUAFIX for “Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of soft drinks; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Drinking water with vitamins; Energy drinks; Essences for use in making soft drinks; Non-alcoholic drinks, namely, energy shots; Non-alcoholic sparkling fruit juice beverages; Powders

for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Sparkling water; Sports drinks, namely, energy drinks; Syrups for making fruit-flavored drinks; Syrups for making soft drinks” in International Class 32, and having been previously granted an extension of time to oppose, hereby opposes the foregoing application.

The specific grounds for this opposition are as follows:

1. PepsiCo, through its predecessors-in-interest, has been engaged in the beverage business for well over 100 years and has become well and favorably known to members of the public, as well as to members of the beverage industry, for quality beverage products and related goods/services. It owns a portfolio of brands that identify carbonated soft drinks, juices and juice drinks, ready-to-drink teas, isotonic sports drinks, energy drinks, bottled water and enhanced waters, among other goods.

2. Since at least as early as July 1994 and continuing through to the present, PepsiCo has used the mark AQUAFINA and variants in connection with an array of beverages and other products, including non-carbonated water and table water. The AQUAFINA brand appears in connection with advertising, marketing, sales and promotional services to authorized bottlers, independent distributors and retailers.

3. Opposer’s AQUAFINA products are marketed and sold in enormous quantities on a nationwide basis, supported by millions of dollars of advertising and promotion each year. Many of Opposer’s products are sold in virtually every supermarket in the United States as well as in mass merchandise stores, numerous convenience stores, vending machines, via the Internet and other outlets.

4. The vast commercial acceptance and success of many of Opposer’s AQUAFINA products for over twenty years is due in large measure to substantial advertising and marketing

efforts by PepsiCo. Opposer has, by virtue of extensive usage, advertising and promotion, built up a very high level of consumer and trade recognition symbolized by its mark AQUAFINA and variants. Opposer's sales of its beverage products marketed under the AQUAFINA mark have exceeded hundreds of millions of dollars each year, over the past several years alone.

5. Since long prior to the filing date of the application-at-issue, AQUAFINA has been identified with Opposer and has appeared on a tremendous amount of product packaging, advertising, in-store display racks, signage and point-of purchase material.

6. PepsiCo also owns and operates a website at AQUAFINA.COM, which is operational twenty-four hours a day, seven days a week, through which PepsiCo advertises, markets and promotes its beverages and other services/products under the mark AQUAFINA and variants.

7. As a result of such extensive and continuous advertising, sale, use and promotion of drinking water under or in connection with Opposer's mark AQUAFINA for over twenty years, such marks have not only acquired substantial public and consumer recognition throughout the United States, but also enjoy valuable goodwill, and have become famous, solely signifying Opposer as the source of products of high quality.

8. In addition to its prior common law rights in the marks AQUAFINA and variants, Opposer is also the owner of numerous United States trademark applications and registrations, each of which incorporate the designation AQUAFINA or variants thereof, including, but not limited to, the following:

MARK	REG. NO.	REG. DATE	FIRST USE DATE	IDENTIFICATION OF GOODS
AQUAFINA	1917411	Sept. 5, 1995	07/00/1994	non-carbonated water, table water, in Class 32

AQUAFINA & Design	2509365	Nov. 20, 2001	01/00/1997	drinking water, in Class 32
AQUAFINA & Design	2509701	Nov. 20, 2001	01/00/1997	drinking water, in Class 32
AQUAFINA (stylized)	2506697	Nov. 13, 2001	07/00/1994	non-carbonated water and table water, in Class 32
AQUAFINA	3567613	Jan. 27, 2009	07/00/1994	drinking water, in Class 32
AQUAFINA FLAVORSPLASH	3383131	Feb. 12, 2008	01/00/2007	flavored waters, in Class 32
AQUAFINA FLAVORSPLASH	4553279	June 17, 2014	10/00/2013	flavorings for beverages, in Class 30
AQUAFINA FLAVORSPLASH WORLD PEACH & DESIGN	4638108	November 11, 2014	10/00/2013	flavorings for beverages, in Class 30
AQUAFINA FLAVORSPLASH SO STRAW-BERRY	4633565	November 4, 2014	10/00/2013	flavorings for beverages, in Class 30
AQUAFINA FLAVORSPLASH GO GRAPE 2 DESIGN	4626218	October 21, 2014	06/00/2014	flavored waters; Class 32

9. Opposer's registrations for these marks are valid, subsisting, in full force and effect, uncanceled and unrevoked, and serve as evidence of Opposer's exclusive right to use such marks in commerce on or in connection with the goods identified in the registrations, as provided by Section 33(a) of the United States Trademark (Lanham) Act, 15 U.S.C. § 1115(a). Further, several of Opposer's registrations for the aforesaid marks have become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065. Hereinafter PepsiCo's foregoing marks, including those registered and/or used in commerce, are referred to individually and/or collectively as the "AQUAFINA Marks".

10. Use of the AQUAFINA Marks has been continuous and they have not been abandoned. As a result of the long, extensive and widespread use, advertising, promotion and registration of the AQUAFINA Marks on and in association with PepsiCo's various goods and services, including, but not limited to, table water and drinking water, and the marketing, advertising and promotional efforts therefor, consumers have become accustomed to associating marks consisting of or containing the term "AQUAFINA" or variants with a single source, that is, PepsiCo.

11. In view of such usage, the AQUAFINA Marks, including AQUAFINA, have become famous and one of the most well-known brands in the United States, representing assets of inestimable value to PepsiCo.

12. On information and belief, on September 3, 2014, Applicant, MVS International Inc., having an address at 2993 SW 141st Terrace, Davie, Florida 33330, filed Application Serial No. 86/384,378 to register AQUAFIX, in connection with "Concentrates and powders used in the preparation of energy drinks and fruit-flavored beverages; Concentrates for making fruit drinks; Concentrates, syrups or powders for making soft drinks or tea-flavored beverages; Concentrates, syrups or powders used in the preparation of soft drinks; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Drinking water with vitamins; Energy drinks; Essences for use in making soft drinks; Non-alcoholic drinks, namely, energy shots; Non-alcoholic sparkling fruit juice beverages; Powders for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Sparkling water; Sports drinks, namely, energy drinks; Syrups for making fruit-flavored drinks; Syrups for making soft drinks" in International Class 32. Upon information and belief, at the time Applicant filed its application for the mark AQUAFIX, it was or should have been fully aware of Opposer's well-

known AQUAFINA Marks and its rights therein. Applicant was at least on constructive notice of Opposer's rights in the AQUAFINA Marks by virtue of its prior federal registrations therefor.

13. Registration of Applicant's alleged mark, which is the subject of the application-in-opposition, is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles Opposer's AQUAFINA Marks, including, but not limited to, AQUAFINA and variants, which have been in use and are also the subject of prior registrations or previously filed applications to register marks in the United States Patent and Trademark Office, as to be likely, when used in connection with the alleged goods of the Applicant to cause confusion, mistake or deception.

14. PepsiCo has priority over Applicant because PepsiCo's use, application filing dates and/or registration dates precede the Applicant's filing date for its application-at-issue and/or any alleged priority date or date of first use in commerce of Applicant's purported mark AQUAFIX.

15. Applicant's alleged mark which is the subject of the application-in-opposition and PepsiCo's AQUAFINA Marks, including, but not limited to, AQUAFINA

16. and variants, are similar. Indeed, the words AQUAFIX and AQUAFINA share the same first six letters – AQUAFI* - followed by only one different letter in the Applicant's mark and two different letters in the Opposer's mark. Consequently, the marks are both visually and aurally identical. On information and belief, the goods in connection with which Applicant's alleged mark are applied for or used and the goods in connection with which Opposer's AQUAFINA Marks are registered and/or used are similar, complementary and/or related.

17. Accordingly, Applicant's claimed mark AQUAFIX shown in the application-in-opposition so resembles PepsiCo's foregoing and previously used and/or registered AQUAFINA

Marks as to be likely to cause confusion, to cause mistake or to deceive with consequent injury to Opposer. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with Opposer's use and registration of its AQUAFINA Marks, including but not limited to AQUAFINA and variants, is that (a) persons are likely to believe that Applicant's goods have their source in PepsiCo, or (b) that Applicant and its goods are a version of Opposer's marks or are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

17. In view of the foregoing, registration of Applicant's alleged mark AQUAFIX is barred by the provisions of Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), because the said mark consists of or comprises a mark which, when used in connection with the alleged goods of Applicant, is likely to cause confusion, mistake or deception.

18. Further and as detailed above, PepsiCo has invested considerable effort and resources in developing, using, advertising, and promoting beverages and other products in connection with its inherently distinctive AQUAFINA Marks in the United States, and over an extensive period of time. Sales of such products under or in connection with the AQUAFINA Marks have been in excess of hundreds of millions of dollars. In view of such substantial usage, exposure and sales, the AQUAFINA Marks have become famous, widely recognized by the general consuming public of the United States as a designation of source of the goods of PepsiCo, and became famous long prior to the filing date of Applicant's application-in-opposition and/or any claimed priority date by Applicant of the alleged mark AQUAFIX shown in U.S. Application Serial No. 86/384,378. Registration and use of Applicant's claimed mark would likely dilute Opposer's famous and inherently distinctive AQUAFINA Marks, including AQUAFINA, in violation of 15 U.S.C. § 1125(c). Accordingly, the applied-for mark AQUAFIX

is not entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.

19. PepsiCo will be damaged by the issuance of a registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading, deceptive and/or dilutive use of AQUAFIX, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

WHEREFORE, Opposer prays that this opposition be sustained in its favor, that registration be denied to Applicant on its Application Serial No. 86/384,378 and that the Board grant all further relief to Opposer that is necessary and just in these circumstances.

Respectfully submitted,

PEPSICO, INC.

Dated: April 24, 2015

By:



Paul A. Lee
Attorney for Opposer
700 Anderson Hill Road
Purchase, NY 10577
(914) 253-3443

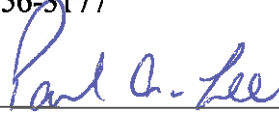
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, NOTICE OF OPPOSITION, was served on Applicant at the correspondence address of record via overnight courier, in an envelope with sufficient postage addressed to:

Humberto Rubio
Law Firm of Rubio & Associates, P.A.
8950 SW 74th Ct., Suite 1804
Miami, Florida 33156-3177

on April 24, 2015

By: _____



Paul A. Lee

Attorney for Opposer